

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1851-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

JANNA MARIE GILBERTSON,

PETITIONER-APPELLANT,

V.

LON ADRIAN GILBERTSON,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

MYSE, J. Janna Marie Gilbertson appeals an order denying her motion to revise a divorce judgment that provided for less child support than the amount she would have received under the percentage standards established under

§ 49.22(9), STATS.¹ See § 767.32(2), STATS. Janna contends that the trial court erred by refusing her request without considering her needs, the needs of the children, and Lon's ability to pay; by failing to recognize a rebuttable presumption in her favor sufficient to support a modification order; and by failing to consider factors listed in § 767.25(1m), STATS., in the refusal to modify. We conclude that Janna waived these issues on appeal by not raising them before the court at the motion hearing. We further conclude that the trial court properly exercised its discretion by refusing to modify the stipulated child support provisions when the sole basis argued before the trial court was an alleged unilateral drafting mistake.

Lon and Janna entered into a Marital Settlement Agreement to settle their divorce, placing primary physical custody of the couple's children with Janna and establishing Lon's child support. The agreement required Lon to pay twenty-five percent of his net income from Valley Gutting, Inc., with an assumed minimum annual net of \$25,000; twenty-five percent of his net income including bonuses from Andersen Corporation; and twenty-five percent of the gross income from his profit sharing plan at Andersen. Janna's counsel drafted the agreement and all prior drafts, and the agreement was incorporated into the Findings of Fact, Conclusions of Law and Judgment of Divorce.

Janna filed this motion to revise the agreement less than two months afterward, claiming that her use of the word "net" in the provision concerning Lon's earned income and bonuses from Andersen was both a typographical mistake and a drafting error.² Janna sought to amend the agreement to replace

¹ This is an expedited appeal under RULE 809.17, STATS.

² Janna's motion included other claims not at issue in this appeal.

“net” with “gross.” Janna’s counsel argued at the hearing that the mistake was made because she practices in Minnesota and Minnesota uses “net” figures, whereas Wisconsin uses “gross” figures, to calculate child support obligations. Janna did not claim or introduce any evidence demonstrating a change in her needs, the needs of her children, or Lon’s ability to pay. Lon argued at the hearing that he relied on the “net income” provision in the stipulation when he made certain specified concessions in other provisions. The trial court dismissed that part of Janna’s motion seeking to amend the judgment, and Janna appeals.

Janna’s sole strategy at the hearing involved an attack on the divorce judgment for an alleged unilateral mistake. On appeal, Janna raises several arguments that were not raised at the motion hearing. This court will not address arguments raised for the first time on appeal. *See Wirth v. Ehly*, 93 Wis.2d 433, 443-44, 287 N.W.2d 140, 145-46 (1980). We therefore limit our review to the unilateral mistake claim.

The decision to modify child support is a discretionary one. *Burger v. Burger*, 144 Wis.2d 514, 523, 424 N.W.2d 691, 695 (1988). Janna argues that child support should be modified because a unilateral mistake resulted in her drafting child support provisions calling for Lon to pay twenty-five percent of his “net” income from wages and bonuses from Andersen Corporation instead of twenty-five percent of his “gross” income from the same.

A unilateral drafting mistake alone is an insufficient basis to modify child support. The trial court found the stipulation to have been achieved through negotiations with both parties represented by counsel. The trial court also found that Lon conceded other matters in the stipulation in return for the use of his “net” earned income from Andersen in calculating his child support obligation.

Moreover, the trial court found the terms of the stipulation to be in the children's best interests. This is a sufficient basis for the court's exercise of its discretion.

By the Court.—Judgment affirmed. No costs awarded.

Not recommended for publication in the official reports.

